Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHOLD RUGER

Appeal No. 1997-2434
Application 08/209,174

ON BRIEF

Before KIMLIN, JOHN D. SMITH and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-11, all the claims in the present application. Claim 1 is illustra-tive:

> 1. A process to make ultrahigh contrast photographic negative images by developing in the presence of an onium compound a photosensitive recording material having at least one layer with a silver halide emul-sion, characterized in that a molecule of the onium compound has at least one quaternary nitrogen atom and at least one tertiary

amine function.

In the rejection of the appealed claims, the examiner relies upon the following references.

Okamura et al. (Okamura)	5,279,919	Jan. 18, 1994
Kojima et al. (Kojima)	5,284,733	Feb. 08, 1994
Kuwabara et al. (Kuwabara)	5,288,590	Feb. 22, 1994

Appellant's claimed invention is directed to a process for making ultrahigh contrast photographic negative images by developing a silver halide emulsion in the presence of an onium compound having at least one quaternary nitrogen atom and at least one tertiary amine function.

Appellant submits at page 3 of the brief that with the exception of claim 7, all the appealed claims stand or fall together with claim 1. However, the argument section of appellant's brief fails to present an argument that is reasonably specific to claim 7. Accordingly, all the appealed claims stand or fall together with claim 1. In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). See also 37 CFR 1.192 c(7) and c(8).

Appealed claims 1-11 stand rejected under 35 U.S.C. § 102, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Okamura '919, Kojima or Kuwabara.

We have thoroughly reviewed each of appellants' arguments for patentability. However we find that appellant has not presented sufficient reasoning or evidence to establish that the examiner's rejections are in error. Accordingly, we will sustain the examiner's rejections.

Appellant contends at page 5 of the brief that "[n]one of the references disclose or even suggest a compound having a quaternary nitrogen atom connected by a linking group to a tertiary amine group as represented by Formula I of Claim 1." However, as properly pointed out by the examiner, appellant's argument is not germane to the subject matter defined by appealed claim 1, since claim 1 fails to recite any Formula, Formula I or otherwise. Simply put, appealed claim 1 does not require that the quaternary nitrogen atoms and the tertiary amine groups are connected by any linking group.

Regarding the rejection over Kojima, we agree with the

examiner that compounds P-28, P-29, P-30 and P-31 all contain the claimed quaternary nitrogen atoms and the tertiary amine function. Appellant maintains at page 6 of the Brief that "[e]ach of the Formulas of Claim 1 of the subject invention

has at least one linking group as defined between the quaternary nitrogen and the tertiary amine . . . Kojima clearly does not disclose such a structure nor is there anything in Kojima that suggests such a structure." However, as explained above, appealed claim 1 fails to recite any such linking group between the quaternary nitrogen and the tertiary amine.

Turning to the rejection over Okamura '919 and Kuwabara, appellant submits the imidazoline structure of the references is an aromatic system and "one of ordinary skill in the art understands that a tertiary amine is not formed in a N, N-disubstituted imidazolium group." (page 6 of brief, second paragraph). As evidentiary support for the argument, appellant cites Beilstein EIII/IV 23, page 568, formula V. However, although Beilstein discloses an imidazolium group

that corresponds to the pertinent moieties of Okamura '919 and Kuwabara, appellant fails to point to where in the Beilstein disclosure it is taught that the nitrogen atom having the alkyl substituent is not considered a tertiary amine function. Hence, appellant has not effectively rebutted the examiner's factual determination that the cited compounds of Okamura '919 and Kuwabara are onium compounds which have the presently claimed

quaternary nitrogen atom and tertiary amine function. To the extent there is a distinction between the onium compounds which make up appellant's disclosed invention and those taught by the applied prior art, such distinction is not apparent from the recitation of appealed claim 1, with which all the appealed claims stand or fall together.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN Administrative Patent Judge	)	
JOHN D. SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PETER F. KRATZ Administrative Patent Judge	)	

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Alfred W. Breiner
115 North Henry Street
P.O. Box 19290
Alexandria, VA 22320-0290